LEONG TENG HIN v. TSUNEYOSU TOBUSE

[O.C.J. (Sinnathuray J.) March 13, 1979]
[Singapore — Summons in Chambers No. 903 of 1979 in Suit No. 696 of 1979]

Practice and Procedure — Debtors — Debtor with alleged intention to abscond — Arrest — Affidavit containing wrong facts — Release — Court's exercise of discretion — Debtors Act (Cap. 19), s. 13(1) & (2).

Debtors — Arrest of debtor — Release — No security furnished — Court's exercise of discretion — Debtors Act (Cap. 19), s. 13(1) & (2).

The plaintiff in this case issued a writ against the defendant, a Japanese citizen, on March 8, 1979. The claim was for a sum of money alleged to be owing by the defendant. On March 12, 1979, the plaintiff took out an application, under the Debtors Act, for the arrest of the defendant. In his affidavit for the application, the plaintiff affirmed that on March 9, 1979 his colleague, one Abdul Rahim, contacted the defendant who was in Kuala Lumpur by telephone. The defendant was alleged to have told Abdul Rahim that he intended to leave Singapore and abscond. The defendant was arrested under section 13(1) of the Debtors Act.

The defendant filed an affidavit setting out facts to show that he had no intention to abscond. The defendant was not in Kuala Lumpur but in Singapore on March 9 as shown by the endorsement in his passport.

Held: (1) a person who files an affidavit, especially under the Debtors Act, must ensure that he has got his facts right;

(2) under section 13(2) of the said Act, it is only when the defendant fails to show cause that the court or judge will order him to furnish security;

(3) in exercise of the court's discretion, the defendant who had shown cause completely should be released without having to furnish security.

SUMMONS IN CHAMBERS.

Tan Bock Huat for the plaintiff/applicant.

H.T. Sam for the defendant/respondent.

Tan Seck Sam (Assistant Registrar) for the Sheriff.

Sinnathuray J. (delivering oral judgment): The plaintiff issued a writ against the defendant, a Japanese citizen, on 8th of March 1979. The claim is for a sum of money alleged to be owing by the defendant. On 12th of March, yesterday, he took out an application, under the Debtors Act, for the arrest of the defendant. In the affidavit for the application, the plaintiff affirmed that on 9th of March his colleague, one Abdul Rahim, contacted the defendant who was in Kuala Lumpur by telephone. He said in that paragraph of the affidavit that the defendant told Abdul Rahim that he intends to leave Singapore and abscond. The plaintiff having satisfied me that the defendant carries on business in Singapore, that he has a good cause of action against the defendant and on the facts set out in the affidavit which I have referred to that the defendant intends to leave Singapore and abscond, I made an order for the arrest of the defendant under section 13(1) of the Act.

The defendant was arrested and produced before me late yesterday afternoon to show cause why he should not furnish security for his appearance. On the facts the defendant told me through his counsel, I released him, without requiring him to furnish any security, to appear in court this morning. I am pleased to see he has faithfully obeyed by being here now.

He has also filed a lengthy affidavit setting out facts to show that he has no intention to abscond. In the affidavit he has said that not only he and the plaintiff have had business transactions but also that they are engaged in business together. On the crucial fact that led to his arrest, the defendant has affirmed in his affidavit that he was not in Kuala Lumpur but in Singapore on 9th of March. The endorsement in his passport and the return air tickets confirm his statement. Clearly then, Abdul Rahim, who has also filed an affidavit this morning that he made the telephone call on 9th of March to Kuala Lumpur, has told an untruth. Also, the plaintiff's affidavit based on information given to him by Abdul Rahim that the defendant intends to abscond, which are very strong words, is now shown to be wrong. I must stress that a person who files an affidavit, especially under the Debtors Act, must ensure that he has got his facts right. In this case the defendant had been in Singapore on 9th of March, is in Singapore today and has given facts which clearly show that he has no intention to leave Singapore without settling the plaintiff's claim.

Next, I turn to the question of law. Counsel for the plaintiff has asserted in his submission that the plaintiff is as of right entitled to demand that the defendant furnishes security. This is an absurd submission. The defendant was arrested on the exercise of a discretion given to me under the Debtors Act. He is before me to show cause. Under section 13(2) of the Act, it is only when the defendant fails to show cause that the court or judge will order him to furnish security. Again, it is a matter for the exercise of a discretion by me. The defendant has shown cause completely to my satisfaction. He is released forthwith.

Order accordingly.

Solicitors: *Tan Jin Hwee & Co.; H.T. Sam & Co.*

TAN CHOON CHYE v. SINGAPORE SOCIETY OF ACCOUNTANTS

[A.C.J. (Wee Chong Jin C.J.) March 27, 1979]
[Singapore — District Court Appeal No. 70 of 1977]

Accountants — Professional misconduct — Disciplinary proceedings — Accountant found guilty of "grave impropriety or infamous conduct in a professional respect" — "Formal complaint" — Meaning of — Accountants Act (Cap. 212), ss. 22, 32(a) & (b), 33 & 34.

Administrative Law — Disciplinary proceedings — Rules of natural justice.

The appellant, an accountant, was charged for "grave impropriety or infamous conduct in a professional respect." The charge arose out of a letter of April 1, 1976 from the Director of the Corrupt Practices Investigation Bureau to the Registrar. The appellant was alleged to have collected $50,000 from one Lou, an industrialist, and to have given the money as a bribe to one Wan, a Project Officer of EDB, for considering his application for registration under the Control of Manufacture Act. The said Wan had also obtained bribes through the appellant from one Fong. The said Wan was charged and convicted accordingly.

The Disciplinary Committee found that the appellant had acted as an intermediary in his capacity as a practising accountant in connection with the said bribery offence in which the appellant had collected $50,000 from one Lou and gave the money as a bribe to Wan.

The appellant appealed. He contended, *inter alia*, that there was no "formal complaint" within the meaning of section 33(1) of the Accountants Act.

Held: (1) the word "formal" in the expression "formal complaint" in section 33(1) of the Accountants Act must be given its ordinary dictionary meaning of explicit and definite. The letter of April 1, 1976 constituted a formal complaint within the meaning of section 33(1);

(2) where no rules have been made to regulate the procedure to be followed during an inquiry, the Disciplinary Committee can lawfully exercise the disciplinary powers conferred on it by section 34 if it conducts the inquiry in accordance with the rules of natural justice;

(3) one of the requirements of natural justice is that a person must be given adequate notice of the case against him to enable him a fair opportunity of answering it. In the present case the charge contained particulars which clearly met this requirement.

DISTRICT COURT APPEAL.

K.E. Hilborne for the appellant.

Alan Wong for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant, Tan Choon Chye, an accountant, after an inquiry, was on September 22, 1977, by an order of the Disciplinary Committee appointed under section 32(b) of the Accountants Act (Chap. 212) found guilty of grave impropriety in a professional respect and it was further ordered that his name be removed from the Register of Accountants kept under the said Act. The appellant was also ordered to pay the costs and expenses of and incidental to the inquiry amounting to $5,546.

The charge against him before the Disciplinary Committee reads as follows: —

"That you acted as an intermediary in your capacity as a practising accountant in connection with a bribery offence, to wit, you collected $50,000 from one Lou Chih Chung, an industralist, and gave the money as a bribe to Wan Ming Sing, a Project Officer of the Economic Development Board, as a favour for showing consideration for an application for registration under the Control of Manufacture Act, thereby committing grave impropriety or infamous conduct in a professional respect in the performance of your professional duties that is discreditable to an accountant so as to render the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or of the Society."

The charge arose out of a letter dated April 1, 1976 from the Director of the Corrupt Practices Investigation Bureau to the Registrar appointed under section 22(1) of the Act which reads as follows: —

"Enclosed herewith is a copy of Summary of Essential Facts which is self-explanatory.

2. It would appear from the results of our investigation that the said Tan Choon Chye, an accountant of M/s Tan Choon Chye & Co. did collect $50,000 from Lou Chih Chung, an Industralist, and give the money as a bribe to Wan Ming Sing, a Project Officer of EDB for considering his application for registration under the Control of Manufacture Act for the manufacture of synthetic knitted garments, knitted fabric and texturised yarn and Tan Choon Chye has admitted so in a statement made by him.

3. Wan Ming Sing also obtained bribes through Tan Choon Chye from:

a) Fong Kou Hwa	—	$5,000
b) Fong Kou Hwa	—	$1,500
c) Fong Kou Hwa	—	$2,500

4. Wan Ming Sing, the Project Officer of EDB, who received bribes was charged in court No. 5 and was convicted and sentenced to 1 year's imprisonment for receiving $50,000 and also was ordered to pay a penalty of $50,000 in default to undergo a further 6 months' imprisonment. The other 3 charges were withdrawn.

5. Your Society may wish to take action against Tan Choon Chye who acted as the go-between for the purpose of obtaining the bribes and giving them to Wan Ming Sing.

6. I should be grateful if you would let me know results in due course."

The matter was referred to the Investigation Committee appointed under section 32(a) of the Act which after investigation recommended that the matter be referred to the Disciplinary Committee. The Disciplinary Committee decided to hold an inquiry into the matter. At the inquiry the appellant was represented by counsel. After the close of the case against the appellant he elected to call no evidence. The Disciplinary Committee found him guilty of grave impropriety in a professional respect and made the orders we have earlier set out and from which he now appeals.

The first contention advanced on behalf of the appellant is that there was no "formal complaint" as required by section 33(1) of the Act in that the letter of April 1, 1976 from the Director of the Corrupt Practices Investigation Bureau was not a "formal complaint" within the meaning of section 33(1) of the Act. The material provisions of section 33 read as follows: —

"33.—(1) Any person who seeks to make a formal complaint that any member of the Society has done anything which renders the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or of the Society shall make the complaint in the first instance to the Registrar of the Society.

(2) Every such complaint (other than a complaint made by a court) shall be in writing and shall be supported by such statutory declaration as the Registrar may require.

(3) Where the Registrar has received any complaint as aforesaid or where facts are brought to his knowledge which satisfy him that there may be grounds for such a complaint it shall be the duty of the Registrar to lay the complaint or facts, as the case may be, before the Investigation Committee which shall investigate the matter and determine whether or not it is to be referred to the Disciplinary Committee.

(7) Where the Investigation Committee determines that any matter investigated by it under this section should be referred to the Disciplinary Committee it shall be the duty of the Chairman of the Investigation Committee to refer the matter to the Disciplinary Committee."

The short and complete answer to this contention is to be found in section 33(3) which requires the Registrar, where *facts* are brought to his knowledge to satisfy him that there may be grounds for such a complaint to lay the *facts* before the Investigation Committee which shall investigate the matter. In any event, I am of the opinion that the word "formal" in the expression "formal complaint" in section 33(1) must be given its ordinary dictionary meaning of explicit and definite and in my judgment the letter of April 1, 1976 constitutes a formal complaint within the meaning of section 33(1).

The next contention is that the Disciplinary Committee had no power to hear the matter placed before it. The argument is this: section 8 enables the Council, with the approval of the Minister, to make such rules (in the Act referred to as "rules of the Society") as may be necessary or expedient for giving effect to the provisions of the Act and for the due administration thereof. Section 34 empowers the Disciplinary

Committee, on a matter being referred to it by the Investigation Committee, "after due inquiry has been made in accordance with the rules of the Society", to exercise the disciplinary powers conferred on it by the Act. No rules of the Society relating to inquiries by the Disciplinary Committee have been made and accordingly, until such rules have been made, the Disciplinary Committee cannot lawfully hold any inquiry. In my opinion there is no substance in this contention. Where no rules have been made to regulate the procedure to be followed during an inquiry, the Disciplinary Committee can lawfully exercise the disciplinary powers conferred on it by section 34 if it conducts the inquiry in accordance with the rules of natural justice. It is to be observed that in the present case it is not contended that the rules of natural justice have not been complied with and indeed there could be no grounds for such a contention.

The last main contention by Mr. Hilborne on behalf of the respondent is that because the charge failed to give particulars of the alleged offence one of the rules of natural justice has not been complied with. His submission before me is that in proceedings of this nature the charge must contain particulars of the alleged offence and in the present case the charge failed to give particulars of the alleged offence because it is framed in the alternative by alleging "grave impropriety *or* infamous conduct in a professional respect." I find this submission entirely groundless. The particulars are clearly set out in the charge. His real complaint with regard to the charge as framed seems to be that it is bad because it is not permissible according to the rules of natural justice to frame in one charge two separate offences in the alternative. If that is his real complaint no authority has been cited to support this contention and I suspect none can be found because there is no such rule of natural justice. One of the requirements of natural justice is that a person must be given adequate notice of the case against him to enable him a fair opportunity of answering it. In the present case the charge contained particulars which clearly met this requirement.

The last contention is that in respect of the order for costs, the amount fixed included an item for $3,800 as Legal Advisor's Fees which, it is submitted, should not be taken into account in fixing the amount of the costs. This argument disregards the provisions of section 34(3)(e) of the Act which empowers the Disciplinary Committee to order the member of the Society concerned "to pay to the Society such sum as it deems fit in respect of the costs *and expenses of and incidental to* any inquiry."

For all these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Lee & Lee.*

THE "LESNOY"
"VIRA I" (OWNERS) v. "LESNOY" (OWNERS)

[O.C.J. (D'Cotta J.) March 29, 1979]

[Singapore — Admiralty In Rem No. 44 of 1973]

Shipping Law — Negligence — Collision — Collision in daylight between ship under way and another lying at anchor — Prima facie evidence of fault — Burden of proof — Damages.

The plaintiffs in this case claimed against the defendants for damages arising out of a collision between their vessel "Vira I" and defendants' vessel "Lesnoy" which was caused by the defendants' negligence. The collision occurred at the Eastern Anchorage, Singapore on February 23, 1972.

On February 22, the plaintiffs' vessel the *Vira* was anchored in the Eastern Anchorage at about 1600 hours. The defendants' vessel the *Lesnoy* was also anchored about 200 metres away. At 1100/1130 hours the next day a collision took place between the two vessels. The plaintiffs claimed that the *Vira* was stationary at the time of the collision. The defendants did not call anyone from the *Lesnoy* as witnesses. Their only witnesses were from the Singapore Adjusters & Surveyors Ltd. who produced the survey certificate and two other witnesses who were not in a position to state how the accident occurred as they were not at the scene of the collision.

Held: in the case of a collision in daylight between a ship under way and another which is proved or admitted to be lying at anchor in a proper place, the burden is upon the former to show that she was not at fault, for when a steamship runs down a vessel at her moorings in broad daylight, that fact is by itself *prima facie* evidence of fault.

Case referred to:-

(1) *"City of Peking"* v. *The Compagnie Des Messageries Maritimes* (1888) 14 App. Cas. 40.

ADMIRALTY *IN REM.*

G. Pannirselvam for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

D'Cotta J.: The plaintiffs' claim is in respect of damages arising out of a collision between their vessel "VIRA I" and the defendants' vessel "LESNOY" which was caused by the negligence of the defendants, their servants or agents and which occurred at the Eastern Anchorage, Singapore, on February 23, 1972.

On February 22, 1972, the plaintiffs' vessel the Vira, a motor tanker of gross tonnage 1292 (hereinafter called "the VIRA") was anchored in the Eastern Anchorage at about 1600 hours; also anchored in the same anchorage about 200 metres away was the defendants' vessel the LESNOY of gross tonnage 1920 (hereinafter called "the LESNOY").

On February 23, 1972, at about 1100/1130 hours a collision between the two vessels took place. The question for determination by the court is what caused the collision i.e. was either vessel or both responsible for the collision. According to the evidence of the Master of the VIRA, Ngyen Van Chieu (PW1) the vessel arrived in Singapore on February 22, 1972 and anchored in the Eastern Anchorage at about 1600 hours. At about 1800/1900 hours he saw the LESNOY also anchored there. On the morning of February 23, 1972, the Master of the VIRA left his vessel at about 9.00 a.m. for the Agents' office in Singapore. At about 12 noon that day, he was informed that there had been a collision. Immediately